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SPECIAL CIVIL APPLICATION NO.2397 OF 1993

Date of Decision: 21.8.1996

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr M B Gandhi, Advocate for the petitioner

Mr B B Naik, Addl.Central Govt.Standing Counsel for the respondent.

CORAM : N N MATHUR, J.  
(August 21, 1996)

ORAL JUDGMENT

This Special Civil Application has been filed by the petitioner Trupti Ramanlal Dave, seeking directions to get the rent of the premises rented out to the respondent department of Central Excise and Customs to reassess for

the period 1.9.1982 to 31.8.1987. A further direction has been sought for payment of the outstanding amount with interest thereon.

2. The premises belonging to the petitioner was let out to respondent No.2 for the use of respondent No.1 in the year 1975 on a rent of Rs.1.25 sq.ft. which was fixed at Rs.1,260/- per month. As per the agreement, the rent was required to be revised at an interval of 5 years as per the CPWD assessment. The grievance of the petitioner is that after the expiry of the 5 years, the rent has not been revised.

3. A certificate dated 24.10.1994 issued by the CPWD has been produced wherein the rent of the subject premises has been considered between Rs. 2,579/- and Rs.3,519/- as reasonable rent. The said assessment has been arrived on the basis of recognised principle of valuation laid down by CPWD and as per the prevailing market rates in the locality.

4. Mr B B Naik, learned Addl.Central Government Standing Counsel submits that the department is agreeable to enhance the rent as per the certificate from the year 1987. He further submits that so far as the claim prior to 1987 is concerned, the same deserves to be dismissed on the ground of delay. The contention of the respondent is that this Special Civil Application has been filed in the year 1993 claiming reassessment of rent for the period 1982-87 as such the petition is highly belated and hence it deserves to be rejected on the ground of laches. He has referred to various decisions of this Court and of the Apex Court.

5. In the case of Ashok Kumar Mishra and Nor. vs. Collector, Raipur & Ors., reported in AIR 1980 SC 112, the Apex Court held that the power of the High Court under Article 226 to issue an appropriate writ is discretionary and if the High Court finds that there is no satisfactory explanation for the inordinate delay, it may reject the petition. The Apex Court also held that on account of delay if the Court finds that the issuance of writ will lead to public inconvenience and interference with rights of others, it will be sound discretion not to exercise the power under Article 226. In the said decision, the election of the Municipal Corporation was challenged and the court found that there was no satisfactory explanation for delay in filing the petition.

6. Second case relied upon by Mr Naik is in the case of Jagdish Narain Maltiar v. The State of Bihar and Ors.

reported in AIR 1973 SC 1343. In the said case, the order of termination was challenged after a period of three years. The Court did not consider sending of memorials to the Government a sufficient ground in explaining delay. In view of this, the Court held that the remedy under Article 226 was not an appropriate remedy.

7. In the case of M/s.Trilokchand Motichand and Ors. vs. H B Munshi, reported in AIR 1970 SC 898, the Court held that the Court will not inquire in the belated and stale claims or take note of evidence or neglect of one's own rights for a long time. The party claiming fundamental rights must move the court before other rights of innocent parties emerge by reason of delay on the part of the person moving the Court.

8. The Division Bench of this Court in the case of Isabhai Musabhai Patel and Ors. vs. The Ahmedabad Municipal Corporation & Ors., reported in 12 GLR 338, held that delay which affects either party and cause a balance of justice, doctrine of laches will apply. In the said case, the tenant had entered into possession of the land after award under the Land Acquisition Act, and then applied for setting aside the award after delay of 7 years. Thus, the Court held that the petition suffers from gross delay and laches.

9. In the present case, the assessment was not done by the CPWD and therefore, the question of fixation of reasonable rent as per the Government's decision did not arise. First time the certificate was issued in the year 1994. In view of this fact, it cannot be said that there is any delay and as such there is laches on the part of the petitioner. It may be noticed that claim of the petitioner has been conceded by the respondents for the period 1987 onwards on the basis of the assessment certificate issued in the year 1994. Thus, there is no justification in refusing reasonable rent to the petitioner on the basis of the same certificate issued in the year 1994 for the period 1982 to 1987. In view of this, the objection raised by the respondents deserves to be rejected.

10. Considering the certificate dated 24.10.1994 of the CPWD, it would be just and proper to fix the rent taking the average of the market rate and assessment as per the principle amount which comes to Rs. 3,049/- per month. It is pointed out that the said amount of rent has been paid to the petitioner under the interim directions of this Court.

6. In view of the aforesaid, this Special Civil

Application is allowed and the respondents are directed to consider and pass an appropriate order for the payment of arrears of rent if any due for the period from 1.9.1982 to 31.8.1987 on the basis of average rent at Rs. 3,049/- per month. If any amount has been paid in excess to the petitioner, the same shall be adjusted against the rent of the subsequent years. Calculations may be undertaken accordingly and the directions of this court may be complied within a period of two months from the date of receipt of the writ. Rule is made absolute to the aforesaid extent with no order as to costs.

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#### FURTHER ORDER

After pronouncement of the judgment, Mr B B Naik, learned Addl. Central Government Standing Counsel submits that the order fixing the rent for the period 1982-87 may be stayed for a period of 4 weeks, with a view to approach the higher forum. This prayer is being opposed by Mr M B Gandhi, learned Advocate for the petitioner. However, it is directed that this order will not be given effect for a period of 3 weeks.

Date: 21.8.1996 (N N Mathur, J.)